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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th January 2005

No. 752—li/1(B)-264/1991-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st December 2004 in Industrial Disputes Case No. 151 of 1993 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s. Orissa Agro Industries Corporation Ltd., Satyanagar, Bhubaneswar and its workmen Shri Bijaya Kumar Pattnaik and 5 others represented through Bharatiya Mazdoor Sangha, Cuttack was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 151 OF 1993

Dated the 21st December 2004

Present :

Shri P. K. Sahoo, O.S.J.S. (Jr. Br.)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Management of .. First Party—Management
M/s. Orissa Agro Industries Corporation Ltd.
Satyanagar, Bhubaneswar.

And

Its Workmen .. Second Party—Workmen
Shri Bijaya Kumar Pattnaik and 5 others
represented through
Bharatiya Mazdoor Sangha, Cuttack.

Appearances :

For the First Party—Management .. Shri S. K. Mohanty

For the Second Party—Workmen .. Shri S. S. Parida

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo No. 12396(5)-L. E., dated the 17th September 1993 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :

“Whether the termination of services of (1) Shri Bijaya Kumar Pattnaik, (2) Shri Bhaskar Chandra Nayak, (3) Shri Shyam Sundar Parida, (4) Shri Niranjan Nayak, (5) Shri Basudeb Satapathy and (6) Shri Krushna Chandra Mohapatra, Mazdoors of Implement Production Factory, Khapuria by the management of Orissa Agro Industries Corporation, Satyanagar, Bhubaneswar with effect from the 18th May 1990 is legal and/or justified ? If not, what relief they are entitled to ?”

3. The brief facts giving rise to the present reference are that workmen namely, Shri Bijaya Kumar Pattnaik, Shri Bhaskar Chandra Nayak, Shri Shyam Sundar Parida, Shri Niranjan Nayak, Shri Basudeb Satapathy and Shri Krushna Chandra Mohapatra were working at Implement Production Factory, Khapuria, Cuttack under the Orissa Agro Industries Corporation, Satyanagar, Bhubaneswar (in short the management) since the date of functioning in the year, 1986-87. Workmen Bhaskar Chandra Nayak and Shyam Sundar Parida were working at Implement Production Factory, Sambalpur under the same management since 1986 and were brought to Khapuria in the year, 1988. They continued to work under the management till the date of their termination on the 18th May 1990. Although all the above workmen had rendered continuous uninterrupted service with effect from 1986 till the date of their termination with much sincerity, devotion and to the utmost satisfaction of the management, but the management without any rhyme or reason had illegally terminated them from their services without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). According to the workmen under external pressure the management recruited some other trainees meant for its Bhogarai Implement Factory of Balasore district undergoing job training at Khapuria and illegally terminated them from their services with effect from the 18th May 1990 which was illegal, improper and unjustified. They had all approached the labour machinery but to no avail. The conciliation proceeding initiated by the District Labour Officer, Cuttack ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. Against such illegal termination all the above workmen have knocked the door of this Court praying for their reinstatement in service with full back wages. Hence the reference.

4. The management on the other hand, through its Project Manager entered its appearance and filed written statement opposing the claims of the workmen *inter alia* stated that none of the workmen had completed 240 days of engagement as regular employees rather they were paid their wages for the days they had worked. It is further averred that the

management had never appointed any of the workmen and therefore the question of their retrenchment does not arise at all. According to the management, the Implementation Production Unit at Khapuria, Cuttack was a very small unit which commenced operation in May, 1988. Its functioning was dependant upon the relative quantity of orders procured mostly for assembling of plough shears and M. B. Ploughs, etc. In such view of the matter, there was no continuity and consistency of workload of the establishment. Whenever the workload of the Unit occasionally increased and the Unit required more numbers of persons, a few outsiders used to be engaged on casual basis and that too on daily wage basis. It so happened that due to paucity of regular work such daily labourers were not even engaged on each day continuously. The said labourers were paid their wages by vouchers and they used to take the payment at the time of their need in a lump sum amount intermittently. No attendance register or acquittance roll was maintained for them nor the management had issued any appointment order in their favour at anytime. It is in such circumstances the concerned workmen were engaged in the Implement Production Unit, Khapuria as casual workers and as and when the work was available for them. However after mid 1990, the Khapuria Unit had to undergo severe stress and strains due to lack of orders and financial strengencies. Whenever some work used to be available, they were done by casual employees including the workmen on contract basis. But from April, 1991, there was no work in the Implement Production Unit at Khapuria at all. It is further stated that the workmen have never worked for more than 240 days as regular employees, therefore, with regard to the termination of the workmen concerned, the provisions of retrenchment are not attracted and the management was not under obligation to comply with the provisions of Section 25 of the Act, therefore, the workmen are not entitled for any relief. On the above backgrounds, the rejection of the claim of the workmen has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed.

ISSUES

(i) Whether the termination of services of (1) Shri Bijaya Kumar Pattnaik, (2) Shri Bhaskar Chandra Nayak, (3) Shri Shyam Sundar Parida, (4) Shri Niranjana Nayak, (5) Shri Basudeb Satapathy and (6) Shri Krushna Chandra Mohapatra, Mazdoors of Implement Production Factory, Khapuria by the management of Orissa Agro Industries Corporation, Satyanagar, Bhubaneswar with effect from the 18th May 1990 is legal and/or justified ?

(ii) To what relief, if any, the workmen are entitled ?

6. The workmen Bhaskar Chandra Nayak and Shyam Sundar Parida in support of their case have examined themselves as W. Ws. 1 and 2 respectively and have relied upon the xerox copies of the documents, such as office order, dated the 24th May 1988, certificate issued by A. E. (I), dated the 31st August 1988, office order, dated the 6th October 1989, muster roll for the month of December 1989, letter No. 9433, dated the 16th January 1990, letter No. 1279 (25), dated the 8th May 1999, allotment of shift duty, challans, list of skilled

N. M. R. staff, confidential letter, dated the 20th September 1989 and application, dated the 21st November 1989 marked as Exts. 1 to 10 respectively. On the other hand, the management has examined the Project Manager, Mir Syed Alli and Branch Manager, Biranchi Narayan Mishra as M. Ws. 1 and 2 respectively and has relied upon the xerox copies of the documents, such as office order, dated 30th November 1989, joint application, dated the 2nd February 1990, individual application, dated the 7th February 1990, vouchers, appointment order, letter, dated the 14th May 1990 and the 6th June 1990, letter submitted by the workmen and letter, dated the 16th August 2001, along with the resolution marked as Exts. A to M respectively in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute at hand, both the above issues are taken up together.

The perusal of the evidence of the W. W. 1 clearly reveals that he was working under the management along with other workmen with effect from the 18th December 1986 till the date of their termination on the 18th May 1990. The management without any prior notice or notice pay and retrenchment compensation had disengaged them on the 18th May 1990. According to him, the management had illegally disengaged him and other workmen without initiating any proceeding or enquiry against them. As they were illegally retrenched, they all raised the present dispute praying for their reinstatement in service with full back wages. During evidence, he has duly proved the xerox copies of the office order, dated the 26th May 1988 regarding his appointment as Watchman, the certificate issued to workman Shyam Sundar Parida (W. W. 2) by the Assistant Engineer (I) of the management, dated the 31st August 1988 regarding his engagement under the management with effect from August 1986, office order regarding shift duty, muster roll for the month of December 1989, office order, dated the 16th January 1990 issued to the Project Manager (Implement Factory) of the management by the Deputy General Manager (Administration) of the management regarding the continuance of the N. M. R. employees (workmen), the letter of the General Manager, dated the 8th May 1990 to all the Field Officers of the management regarding the discontinuance of the daily wages and the allotment of shift duty by the Project Manager, dated the 8th August 1989 marked Exts. 1 to 7 respectively. He admits in his cross-examination that no appointment order was issued and they were never engaged for any specific period. It has been clearly suggested that they had not worked continuously for 240 days prior to their termination and that they had never been retrenched by the management rather they voluntarily abandoned the job with effect from the 18th May 1990 and that they are not entitled to be reinstated in service with full back wages to which he has given a negative reply. Similar statement is also noticed in the evidence of W. W. 2, Shyam Sundar Parida who in his evidence has categorically stated that he was working in the Implement Factory at Remed in the district of Sambalpur under the management from August, 1986 to August, 1988 continuously as a Welding Helper. From August, 1988 the duty was shifted to Cuttack Implement Factory of the management where the shift system was introduced in the Production Unit and six other persons from Bhogarai were engaged in the work. He has further stated that the persons

coming from Bhogarai were made permanent by the management whereas they were asked to work as N. M. R. On the 18th May 1990, the management gave in writing to the effect that there was no work for them. During evidence, he has proved the challans in which he was given work, the letter recommending the list of skilled N. M. R. staff to the head office by the Project Manager, another letter, dated the 20th September 1989 addressed to the Managing Director by the Project Manager regarding the continuance of the six skilled N. M. Rs. (workmen) marked as Exts. 8 to 9/a respectively. Similar suggestions have been given to him to which he has replied in the negative.

8. On the other hand, the evidence of M. W. 1, Mir Sayed Alli clearly goes to show that the workmen had not completed 240 days in 12 calendar months preceding the date of refusal of employment. In his evidence, he has categorically stated that the workmen were neither retrenched nor terminated from service rather they voluntarily abandoned the service. During cross-examination, he has stated that since the management had neither refused employment nor retrenched the workmen, they are not entitled to get any retrenchment compensation. He has clearly denied his knowledge regarding the tenure of the engagement of the workmen at Cuttack Unit during the time of his (M. W. 1) predecessor. Similar statement is also noticed in the evidence of M. W. 2, Biranchi Narayan Mishra. In his evidence, he has clearly stated that he was working in Khapuria Unit of the management from 1988 to August, 1992 as Foreman where the workmen were working as casual labourers and as and when need was felt, their services were taken. He has further stated that no appointment order was issued to the workmen and none of the workmen had completed 240 days of work in 12 calendar months preceding the date of refusal of employment. He has specifically stated that the management had not refused employment to them but the workmen demanded wages in the holidays including the Sundays to which the management did not agree. During cross-examination, he has clearly stated that he was also working under the management in the Sambalpur Unit from 1984 to 1988 at Remed Production Unit where workmen Bhaskar Nayak and Shyam Sundar Parida were working. He has also denied his knowledge regarding the period of engagement of the concerned workmen from 1988 to 1992 at Khapuria.

9. Both the employer and as well as the employees have adduced evidence in support of their respective cases. The management has taken a stand before this Court that the workmen were casual workers and they were engaged on daily wage basis and as and when the work was available for them. It is further stated that the workmen have never worked for more than 240 days as regular employees, therefore, with regard to the termination of the workmen, the provisions of retrenchment are not attracted and the management was not under the obligation to comply with the provisions of Section 25-F of the Act. Therefore, the workmen are not entitled for any relief. The further plea taken by the management is that the management had not terminated the services of the workmen rather they voluntarily abandoned their services. The workmen, on the other hand, have taken the plea to the effect that they had completed more than 240 days of continuous service in terms of the statutory provisions of the Act. But the management while terminating their services had not given any notice or notice pay and

retrenchment compensation and had thereby violated the mandatory provisions of Section 25-F of the Act. According to the workmen, they had not voluntarily abandoned their services rather the management without following the mandate of Section 25-F of the Act and without any rhyme or reason had illegally terminated them from their services with effect from the 18th May 1990. The management in support of its case has proved certain documents marked as Exts. A to M respectively. In order to establish that the workmen had not worked for more than 240 days in the year preceding their termination and that they had voluntarily abandoned their services with effect from the 18th May 1990. But after carefully examining all the documents relied upon by the management, I am of the opinion that the management has miserably failed to demonstrate that the workmen had not worked for more than 240 days in the preceding calendar year and that they had voluntarily abandoned their job. On the other hand, it is clearly evident from the evidence of the workmen that they have rendered continuous uninterrupted service with effect from 1986 till the date of their termination on the 18th May 1990. The documents already relied upon by the workmen marked as Exts. 1 to 10 respectively clearly reveals that the workmen were working under the management as skilled N. M. R. workers with effect from 1986 till the date of their termination on the 18th May 1990 and the management while terminating their services had not issued any notice or notice pay and retrenchment compensation which, in my view, are in complete violation of the mandatory provisions of Section 25-F of the Act. Therefore, the termination having been made in violation of the mandatory provisions in Section 25-F of the Act, in my opinion, is void *ab initio*.

10. It has been settled in catena of decisions that a workman is entitled to one month's notice before retrenchment or one month's pay in lieu thereof under Section 25-F of the Act. Such notice or payment in lieu thereof is a condition precedent for effecting retrenchment. Compliance of Section 25-F of the Act is must, otherwise, the order of termination becomes null and void. Therefore, Section 25-F of the Act being a beneficial legislation, it has to be strictly complied with and is a mandatory pre-condition but in the present case as it reveals the management has not followed the condition precedent while terminating the services of the workmen. The Hon'ble Apex Court in the matter of Karnataka State Road Transport Corporation Vrs. M. Boraiah reported in AIR 1983 Supreme Court 1320, Gammon India Ltd. Vrs. Niranjan Das reported in 1984 (48) FLR 310 and workmen Vrs. Food Corporation of India reported in AIR 1985 Supreme Court 670 has consistently taken the view that "The provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*". The further settled position of law is that even if the case not upset up by the employer is taken to be correct that the concerned workmen have abandoned, then also their services can not be terminated in the manner as it has been done without complying with the provisions of Section 25-F of the Act. After carefully examining the evidence already adduced by the parties, the documents relied upon by them and keeping in view the settled position of law, I am of the view that the action of the management in terminating the services of the workmen with effect from the 18th May 1990 was illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter, the workmen are entitled to the relief of reinstatement.

11. The persual of the schedule of reference clearly emerges that the workman have been terminated from their services with effect from 18th May 1990 and in the meantime more than 14 years have been passed. Nowhere it has been proved by the management that the workmen have been gainfully employed elsewhere with effect from the date of their termination. In such premises, the workmen are entitled to be reinstated in service but on the facts and circumstances of the present case, as the workmen had not worked with effect from the date of their termination, they are entitled to get a lump sum compensation to the tune of Rs. 3,000 each in lieu of back wages which in my opinion would meet the ends of justice in the instant case. Both the above issues are answered accordingly.

9. Hence, it is ordered :

That the termination of services of (1) Shri Bijaya Kumar Pattnaik, (2) Shri Bhaskar Chandra Nayak, (3) Shri Shyam Sundar Parida, (4) Shri Niranjana Nayak, (5) Shri Basudeb Satapathy and (6) Shri Krushna Chandra Mohapatra, Mazdoors of Implement Production Factory, Khapuria by the management of Orissa Agro Industries Corporation, Satyanagar, Bhubaneswar with effect from the 18th May 1990 is neither legal nor justified. The workmen concerned are entitled to be reinstated in service with a lump sum compensation of Rs. 3,000 (Rupees three thousand only) each in lieu of back wages.

The reference is thus answered accordingly .

Dictated and corrected by me.

P. K. SAHOO
21-12-2004
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
21-12-2004
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
D. MISHRA
Under-Secretary to Government